IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

FAO No.4175 of 2004(O&M)
Date of Decision: 11.1.2007

Smt.Vijay Lakshmi

Appellant

versus

Krishna Bai and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MR. JUSTICE BALDEV SINGH

Present: Shri Sanjeev Gupta, Advocate for the appellant

Jasbir Singh, J. (Oral)

C.M. No.19080-CII of 2006

This application has been moved with a prayer that operation of the award, under challenge, in FAO No.4175 of 2004, be stayed. At the time of argument counsel states that the appeal, referred to above, be taken up for hearing on merits. We order accordingly.

FAO No.4175 of 2004

Appellant is owner of the offending vehicle, which has caused accident on 19.8.2000, causing death of Shri Bulla Ram. Vehicle in question was not insured. On pleadings of the parties, following relevant issues were framed by the Motor Accident Claims Tribunal, Sirsa (in short, the Tribunal), on 21.5.2003:-

"1. Whether Bulla Ram son of Suhawa Ram died in a road accident which took place on 19.8.2000 near village Natar,

P.S.Sadar, Sirsa due to rash and negligent driving on the part of respondent No.1- driver of Tractor No.PBI-4798 as alleged? OPP.

2. Whether the petitioners are entitled to an award of compensation and if so, for how much and from whom?"

After discussing evidence on record with regard to issue No.1, following finding was given by the Tribunal:-

"*9. The petitioners to prove that the accident in question took place due to rash and negligent driving of the offending tractor by respondent no.1 examined Subhash Chander, one of the petitioners as PW-2, who tendered in evidence his affidavit Ex.PW2/A swearing that on the fateful day, his father was riding a bicycle and who reached in the area of village Natar, the offending tractor came from back side and struck in the bicycle of his father. His father suffered multiple grievous injuries and succumbed to the injuries on the spot. Petitioner Subhash was following his father on his (Subhash) bicycle who witnessed the accident. He shifted the deceased to Civil Hospital, Sirsa where autopsy was conducted on his dead body. The petitioners in support of their case also relied upon Ex.P-1 certified copy of FIR No.142 dated 19.8.2000, Ex.P-2 certified copy of the Post Mortem Report.*

10. On the other hand, respondent No.2 Smt.Vijay Lakshmi to rebut oral and documentary evidence led by the petitioners appeared as RW-1 and tendered in evidence her affidavit Ex.RW1/A swearing that respondent No.1 Mohammad Isryal was never employed by her on duty on the offending tractor at

any point of time. She specifically denied the accident in question. However, in the cross examination, she admitted that the offending tractor was seized by the police during the course of investigation of the accident case. The oral and documentary evidence led by the petitioners on this issue remained almost unrebutted and unchallenged. So, from the unrebutted statement of Subhash PW-2, certified copy of FIR Ex.P-1 and Post Mortem report Ex.P-2 and admission of Smt.Vijay Lakshmi as RW-1 that the offending tractor was seized by the police during the investigation of the accident case, it is proved that the accident in question took place due to rash and negligent driving of offending tractor by respondent no.1 wherein Bulla Ram suffered multiple injuries and succumbed to the injuries on the spot. Hence, this issue No.1 is decided in favour of the petitioners and against the respondents."

It is apparent from the records that the Tribunal, on appreciation of documentary evidence and by relying upon testimony of an eye witness, came to a definite conclusion that driver of the tractor, was negligent in causing that accident. Defence of the appellant - owner that he never employed the driver on the tractor, was negatived, after analyzing evidence on record. By taking note of FIR Ex.P-1 and post mortem report, the Tribunal has held that the driver of the tractor was responsible for causing the accident. So far as quantum of compensation is concerned, the same also appears to be justified. Age of the deceased was 48 years. He owned 5 acres of land and 10-15 acres of land, he was cultivating on lease. He also owned a dairy farm. By taking note of above said facts, the

Tribunal has assessed his income at Rs.2100/- per month. After deducting 1/3rd out of the said amount towards personal spending, dependency has been assessed at Rs.1400/- per month. Multiplier of 10 has been applied and after calculation, an amount of Rs.2,08,000/- has been granted towards compensation. We feel that the amount granted is perfectly justified and rather is on the lower side. No case is made out for interference.

Dismissed.

(Jasbir Singh)
Judge

January 11, 2007
gk

(Baldev Singh)
Judge